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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,640

03/16/2004

James F. Conway

ACIP 8890US

4917

1688 7590 03/19/2007
POLSTER, LIEDER, WOODRUFF & LUCCHESI
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ST. LOUIS, MO 63131-3615

EXAMINER

LE, TAN

ART UNIT

PAPER NUMBER

3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/802,640

Applicant(s)

CONWAY, JAMES F.

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/25/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the species of Figs 1-3, claims 1-8 and 11-20 in the reply filed on 10/16/06 is acknowledged. The traversal is on the ground(s) that (1) clearly, the Office will have to examine each of the alleged different species in order to determine patentability of the selected claims (2) the examiner contends the species are distinct "because each them has a distinct feature", the examiner has not provided reasons and or/examples to support this conclusion; (3) the examiner is required to show by appropriate explanation a separate classification, or separate status in the art, or a different field of search. This is not found persuasive because (1) there is no requirement to examine each of the alleged species in order to determine patentability of the selected claims; (2) there is no requirement to indicate why species are considered patentably distinct; (3) It should be noted that the requirement set forth is one of an election between species not a restriction between inventions. Applicant needs only clearly admit on the record that the various species are not patentably distinct, if such is the case. Applicant's reliance on MPEP 803 is misplaced as such pertains to restriction requirements, not election requirements. In summary, applicant has failed to show why the instant species I is not patentably distinct over species II and provide the reason why there is not a serious burden in searches. If the species are not patentably distinct, the applicant should clearly admit this on the record. The requirement is still deemed proper and is therefore made FINAL.

Applicant indicated that claims 9-10 are not readable to the elected species. However, claims 11-15 depend upon claim 9. Therefore claims 11-15 are also not readable to the elected species.

Accordingly, Claims 9-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 6/25/04 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

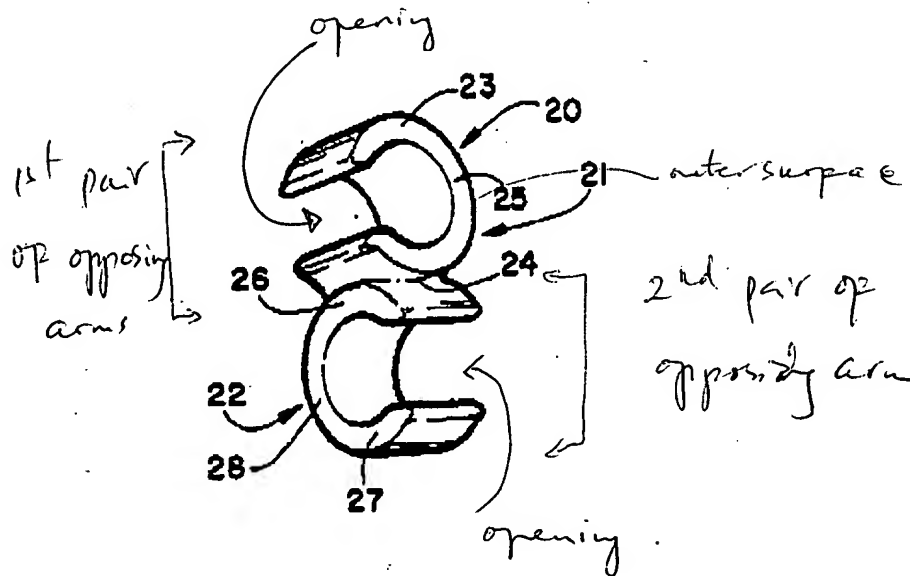
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 5,371,991 to Bechtel et al.

As to claims 1,4-7, 16 and 20, Bechtel et al teaches a re-bar clamp assembly (Fig. 2) comprising all the limitations as claimed in claims 1, 4-7, 16 and 20 as shown on

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the attached Figure 2. With regards to claim 7, the material of the clip, Bechtel et al also discussed on col. 2, line 68 and col. 3, lines 1-4) as being made out of plastic.



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 8, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bechtel et al. in view of US patent No. 4,121,798 to Schumacher et al.

Bechtel et al. device differs from claims 2-3, 17 and 19 of the present invention in that it is not provided with a flared outwardly at the ends of each of pair of arms.

Schumacher et al. teaches the concept of such so as to permit the pairs of opposing arms to be easily to or release from. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flare extended outwardly at the ends of each pair of the opposing arms on Bechtel et al. as taught by Schumacher et al. in order to facilitate the insertion of or removal from the elongated object to the clamp.

As to claims 8 and 18, Bechtel et al. device also differs from claims 8 and 18 of the present invention in that it is not provided with the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance.

Schumacher et al. teaches the concept of such. Schumacher teaches the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance so that to allow the first pair of opposing arms to hold or snap into a bigger elongated object.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first distance being greater than the second distance on Bechtel et al. as taught by Schumacher et al. in order to allow the first pair of opposing arms being capable of snap fit engagement with a bigger size of an elongated object.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,610,122 to De Clecq

4,100,652 to Carlson

Des 375,453 to Fleck

5,332,090 to Tucker

3,747,166 to Eross

The above patents disclose various types of clip or clamp holders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818.

The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tan le
March 8, 2007.



Cari D. Friedman
Supervisory Patent Examiner
Group 3600